

## OECD releases outcomes of the second phase of peer reviews on BEPS Action 13 and announces public consultation

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### Executive summary

On 3 September 2019, the Organisation for Economic Co-operation and Development (OECD) released the compilation of outcomes of the second phase of peer reviews<sup>1</sup> (the Compilation) of the minimum standard on Action 13 (*Transfer Pricing Documentation and Country-by-Country Reporting*) of the Base Erosion and Profit Shifting (BEPS) project.

According to the Compilation, over 80 jurisdictions have already introduced legislation to impose a filing obligation for Country-by-Country (CbC) Reporting on multinational enterprise (MNE) groups, covering almost all MNE groups with consolidated group revenue equal to or exceeding €750 million. Where legislation is in place, the implementation of CbC Reporting has been found to be largely consistent with the Action 13 minimum standard. However, 41 jurisdictions have received a general recommendation to either put in place or finalize their domestic legal or administrative framework, and 17 jurisdictions received one or more recommendations to make improvements to specific areas of their framework.

The next annual peer review (phase three) was launched in July 2019 and will aim to review all the jurisdictions participating in the OECD's Inclusive Framework, focusing on progress made by jurisdictions to address recommendations in the phase two peer report.

In addition, the OECD has updated its [website](#) on country-specific information on CbC Reporting. The updated website includes an enhanced table providing high-level information on jurisdictions' implementation of CbC Reporting. The table covers whether a jurisdiction has introduced CbC Reporting, the effective date of the CbC Reporting rules, the threshold for CbC Reporting, the deadline for filing reports, whether local filing and notification requirements have been introduced, whether the jurisdiction is a signatory of the CbC Multilateral Competent Authority Agreement (MCAA), whether the jurisdiction has reciprocal or non-reciprocal status with respect to exchanges under the CbC MCAA, and whether there are controls in place to ensure the appropriate use of CbC reports.

## Detailed discussion

### Background

In October 2015, the OECD released the final reports on all 15 focus areas of the BEPS Action Plan.<sup>2</sup> Action 13 specifically relates to CbC Reporting and established certain reporting requirements as a minimum standard, which is subject to peer review. On 1 February 2017, the OECD released terms of reference for the peer review of BEPS Action 13 on CbC Reporting (Peer Review Document).<sup>3</sup> The terms of reference in the Peer Review Document focus on three key aspects of CbC Reporting: (a) the domestic legal and administrative framework, (b) the exchange of information framework, and (c) the confidentiality and appropriate use of CbC reports.

The peer review process is a staged approach across 2017, 2018 and 2019, allowing for the early detection of inconsistencies with the minimum standard as well as providing the opportunity to take action to address inconsistencies. Each phase of the peer review focuses on different key aspects of jurisdictions' implementation. During phase one of the peer review, the review focused on the domestic legal and administrative framework as well as certain aspects of confidentiality. During phase two, the review focuses on the exchange of information framework and appropriate use. During phase three, the review will cover all three key aspects of jurisdictions' implementation.

On 23 May 2018, the OECD released the first compilation of annual peer reviews, reflecting the review of 95 jurisdictions that provided legislation or information pertaining to the implementation of CbC Reporting.<sup>4</sup>

### Annual peer review report on CbC Reporting (Phase two – Compilation)

On 3 September 2019, the OECD released the second compilation of annual peer reviews. The reviews generally reflect the status of implementation as of 31 March 2019, with the exception of information on the number of activated relationships for the exchange of CbC reports, which reflects the status as of 31 May 2019.

The Compilation covers the peer review of 116 jurisdictions participating in the Inclusive Framework.<sup>5</sup> Some Inclusive Framework members were not included in the peer review, either because they joined after 1 October 2018 or because they opted out of the peer review in accordance with the peer review terms of reference. Jurisdictions opting out of the peer review are required to confirm that they do not have any resident entities that are the Ultimate Parent Entity of an MNE group with revenue above the consolidated revenue threshold, and that they will not require local filing of CbC reports. Each of the jurisdictions reviewed received its own individual report, which together make up the Compilation.

#### Part A: Domestic legal and administrative framework

The first part of each jurisdiction's report analyzes whether the jurisdiction has put in place a domestic legal and administrative to ensure CbC Reporting by the required taxpayers to the tax administration, and, when applicable, whether the recommendations made in the first annual peer review have been addressed by the assessed jurisdiction or whether the recommendations remain in place because they have not yet been addressed. Part A covers: (a) the parent entity filing obligation; (b) the scope and timing of the parent entity filing obligation; (c) the limitation on the local filing obligation; (d) the limitation on local filing in the case of surrogate filing; and (e) the effective implementation.

According to the Compilation, over 80 jurisdictions have a domestic legal framework for CbC Reporting in place, covering almost all MNE groups with consolidated group revenue at or above the threshold of €750 million. The remaining Inclusive Framework jurisdictions are working toward finalizing their domestic legal frameworks, the Compilation notes. According to the OECD press release<sup>6</sup> accompanying the Compilation, where legislation is in place, the implementation of CbC Reporting has been found largely consistent with the Action 13 minimum standard.

Out of the 116 assessed jurisdictions, 58 jurisdictions<sup>7</sup> met all the terms of reference relating to the domestic legal and administrative framework; 41 jurisdictions<sup>8</sup> received a general

recommendation to put in place or finalize their domestic legal and administrative framework, and 17 jurisdictions<sup>9</sup> received one or more recommendations for improvements to specific areas of their framework. This includes amending definitions in the legislation to ensure they are in line with the minimum standard, clarifying and amending the group revenue threshold, and limiting requirements for local filing of reports.

### Part B: Exchange of information framework

The second part of each report addresses whether and to what extent jurisdictions have international exchange of information agreements in place that allow for the automatic exchange of CbC reports. This includes reviewing all aspects of exchange of information, including (a) the exchange of information framework; (b) the content of information exchanged; (c) the completeness of exchanges; (d) the timeliness of exchanges; (e) the process for temporary suspension of exchange or termination of qualifying competent authority agreement (QCAA); (f) consultation with the other Competent Authority before determining systemic failure or significant non-compliance; (g) the format for information exchange; and (h) the method for transmission.

According to the Compilation, 67 jurisdictions have multilateral or bilateral competent authority agreements in place that are effective for taxable periods starting either on or after 1 January 2016 or on or after 1 January 2017. As of August 2019, 82 jurisdictions<sup>10</sup> have signed the CbC MCAA and over 2200 bilateral exchange relationships have been activated. These include exchange relationships under the CbC MCAA, between European Union (EU) Member States under EU Council Directive 2016/881/EU and between signatories to bilateral competent authority agreements for exchanges under Double Tax Conventions or Tax Information Exchange Agreements.

The Compilation encourages jurisdictions that do not yet have effective agreements in place to take further steps to sign the CbC MCAA and/or activate the bilateral relationships under the CbC MCAA. Another option suggested in the Compilation for countries that have not signed the CbC MCAA is to continue to work actively toward signing bilateral competent authority agreements with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency, and appropriate use conditions.

Of the 116 assessed jurisdictions, 54<sup>11</sup> met all the terms of reference regarding the exchange of information. The remaining 62 jurisdictions received one or more

recommendations for improvements in specific areas. These recommendations include, for example, taking steps to have qualifying competent authority agreements in place with jurisdictions participating in the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, and with which the assessed jurisdiction has an exchange of information agreement in effect that provides for the automatic exchange of tax information. The recommendations also include taking steps to implement processes or written procedures to ensure that the exchange of information is conducted in a manner consistent with the terms of reference relating to the exchange of information framework ahead of the first exchanges of information

### Part C: Confidentiality and appropriate use

The third and final part of each report assesses whether jurisdictions have measures in place to ensure that CbC reports are kept confidential and are used appropriately. With respect to confidentiality, jurisdictions should, *inter alia*, have international exchange of information mechanisms that provide that any information received shall be treated as confidential, have in place and enforce legal protections of the confidentiality of the information contained in CbC reports that are received by way of local filing, have effective penalties for unauthorized disclosures or unauthorized use of confidential information, and in general, ensure confidentiality in practice.

With respect to appropriate use, the peer review process includes an assessment of whether jurisdictions have in place mechanisms to ensure that CbC reports that are received can only be used to assess high-level transfer pricing risks and other BEPS-related risks, and for economic and statistical analysis where appropriate, and that CbC reports cannot be used as a substitute for a detailed transfer pricing analysis or on their own as conclusive evidence regarding the appropriateness of transfer prices or to make adjustments to the income of any taxpayer on the basis of an allocation formula.

According to the Compilation, 58 jurisdictions<sup>12</sup> have measures in place to ensure the appropriate use of CbC reports. The OECD received detailed information relating to the appropriate use of CbC reports from 39 jurisdictions during the first annual peer review and from an additional 19 jurisdictions during the second annual peer review. Other jurisdictions either did not yet have measures in place relating to appropriate use, indicated that they are taking steps to have measures in place to ensure appropriate use

of information, or did not provide information on this point. Anguilla, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Costa Rica, Curacao, Nigeria, Peru, Romania, Qatar, Turks and Caicos Islands and the United Arab Emirates are non-reciprocal jurisdictions and they have committed to send CbC reports to their exchange partners but will not receive CbC reports submitted to the tax authorities in other jurisdictions and will not apply local filing. As such, for these 14 jurisdictions, their compliance with respect to Part C was not further assessed.

For the assessment of the confidentiality requirements, the Compilation notes that review relied on the work and conclusions of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum has conducted preliminary expert assessments of confidentiality and data safeguards with respect to the standard on automatic exchange of information (AEOI). Of the 116 assessed jurisdictions, 73 have undergone an assessment by the Global Forum on confidentiality and data safeguards in the context of implementing the AEOI standard and did not receive any recommendation. In contrast, 12 jurisdictions are currently working on an action plan issued by the Global Forum as a consequence of its review. As it contains non-public information on jurisdictions internal systems and procedures, the outcomes of that work are not published, and no further details of the review of confidentiality is provided in the Compilation.

### **OECD CbC Reporting implementation overview and other CbC Reporting related work**

Following the first exchanges of CbC reports in June 2018, the Compilation notes that work is underway to support the effective use of CbC reports by tax administrations in assessing transfer pricing and other BEPS-related risks. According to the OECD's press release accompanying the Compilation, CbC reports are central to several related projects, including the International Compliance Assurance Programme (ICAP)<sup>13</sup> pilot for the multilateral risk assessment of large MNEs, the Comparative Risk Assessment (CoRA) initiative to improve tax administrations' understanding of common international tax risk factors and consistency in the interpretation of potential risk indicators, and the Tax Risk Evaluation and Assessment Tool (TREAT) that is currently being developed by the OECD to help tax administrations use CbC reports to identify important indicators of potential tax risk. In addition to these initiatives, the press release notes

that the OECD is also advancing on work on the 2020 review of the CbC Reporting minimum standard and will host a public consultation in early 2020 to assess whether modifications to the content of the CbC reports should be made to require reporting of additional or different data.

In addition to the publication of the Compilation, the OECD also recently updated its [website](#) on country-specific information on CbC Reporting implementation to include an enhanced table providing high-level information. The website also provides information on whether each jurisdiction has introduced CbC Reporting, the effective date of any CbC Reporting rules, any thresholds for CbC Reporting requirements, the deadline for filing CbC reports, whether local filing and notifications have been introduced, whether the jurisdiction is a signatory of the CbC MCAA, whether the jurisdiction has reciprocal or non-reciprocal status with respect to exchanges under the CbC MCAA, and whether there are controls in place to ensure the appropriate use of CbC reports.

## **Implications**

The next annual peer review (phase three) was launched in July 2019 and will review remaining members of the Inclusive Framework, focusing on progress made by jurisdictions to address recommendations in the second phase of the peer review.

The Compilation confirms the significant progress made with respect to implementation of CbC Reporting requirements around the world and increased sharing of tax and financial data among tax authorities as a result. Taxpayers should therefore expect that information provided to one tax authority by filing a CbC report will be shared with other relevant jurisdictions.

In addition, the future deployment of OECD risk assessment tools, together with the existing use of CbC Reporting data analytics by many tax authorities, underscores the need for MNEs to be confident that their data governance approach is sufficient to meet both current and future demands.

Companies should also take note of the notice that there will be a public consultation in early 2020 with respect to the CbC Reporting minimum standard. Companies may want to participate in this consultation and provide feedback based on their experiences with CbC Reporting.

## Endnotes

1. <http://www.oecd.org/tax/beps/country-by-country-reporting-compilation-of-peer-review-reports-phase-2-f9bf1157-en.htm>.
2. See EY Global Tax Alert, [OECD releases final reports on BEPS Action Plan](#), dated 6 October 2015.
3. See EY Global Tax Alert, [OECD releases peer review documents on BEPS Action 5 on Harmful Tax Practices and on BEPS Action 13 on Country-by-Country Reporting](#), dated 6 February 2017.
4. See EY Global Tax Alert, [OECD releases first annual peer review report \(Phase 1\) on Action 13](#), dated 25 May 2018.
5. Andorra, Angola, Anguilla, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda, Botswana, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands, Chile, China (People's Republic of), Colombia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Curacao, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Haiti, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Jamaica, Japan, Jersey, Kazakhstan, Kenya, Korea, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Mongolia, Montserrat, Netherlands, New Zealand, Nigeria, North Macedonia (Republic of), Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Lucia, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovak Republic (Slovakia), Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vietnam and Zambia.
6. <http://www.oecd.org/tax/beps/oecd-q20-inclusive-framework-on-beps-delivers-tax-transparency-action-13-country-by-country-reporting-shows-big-progress.htm>.
7. Andorra, Anguilla, Argentina, Australia, Austria, Belgium, Bermuda, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Colombia, Croatia, Curaçao, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Guernsey, Hong Kong, Hungary, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, San Marino, Seychelles, Singapore, Slovakia, Slovenia, South Africa, South Korea, Sweden, Switzerland, Turks and Caicos Islands, and the United Kingdom.
8. Angola, Aruba, Bahrain, Barbados, Belize, Benin, Botswana, Brunei Darussalam, Cameroon, Congo, Democratic Republic of the Congo, Djibouti, Egypt, Gabon, Georgia, Haiti, Iceland, Israel, Jamaica, Kenya, Liberia, Macau (China), Maldives, Mongolia, Montserrat, North Macedonia, Oman, Paraguay, Saint Lucia, Saudi Arabia, Senegal, Serbia, Sierra Leone, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Vietnam and Zambia.
9. Bahamas, Chile, China, Costa Rica, Cote d'Ivoire, France, India, Kazakhstan, Latvia, Nigeria, Papua New Guinea, Romania, Russia, Spain, Sri Lanka, United States and Uruguay.
10. Andorra, Anguilla, Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guernsey, Haiti, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turks and Caicos Islands, United Arab Emirates, United Kingdom and Uruguay.
11. Anguilla, Argentina, Australia, Austria, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Colombia, Croatia, Curaçao, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guernsey, Hungary, Iceland, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, San Marino, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, United Kingdom and Uruguay.
12. Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, China, Colombia, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guernsey, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, San Marino, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turks and Caicos Islands, United Kingdom, United States and Uruguay.
13. See EY Global Tax Alerts, [OECD launches International Compliance Assurance Programme pilot](#), dated 26 January 2018 and [OECD's Forum on Tax Administration announces International Compliance Assurance Programme \(ICAP\) 2.0 and publishes new Pilot Handbook](#), dated 4 April 2019.



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